

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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OFFICE OF THE SECRETARY

In the Matter of)

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Establishment of a Class A
Television Service)

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MM Docket No. 00-10
MM Docket No. 99-292
RM-9260

To the Commission:

**COMMENTS OF
CENTEX TELEVISION LIMITED PARTNERSHIP**

Centex Television Limited Partnership ("Centex"), by its attorneys, hereby respectfully submits the following comments in response to the Commission's *Order and Notice of Proposed Rule Making In the Matter of Establishment of a Class A Television Service ("NPRM")*.¹

Pursuant to the Community Broadcasters Protection Act of 1999 ("CBPA"),² the Commission sought by the NPRM to establish regulations for Class A television licenses for qualifying low-power television ("LPTV") stations.³

In the NPRM, the Commission requested comments on the proper definition of "market area" for purposes of determining whether a station satisfied the locally produced programming requirement. *See NPRM*, at ¶19. Centex proposes that consistent with the Congressional goals of the CBPA, "market area" should be defined as the Nielsen determined Designated Market Area

¹ *Order and Notice of Proposed Rule Making In the Matter of Establishment of a Class A Television Service*, MM docket No. 00-10, 99-292, RM-9260, FCC 00-16 (Jan. 13, 2000).

² Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I, *codified* at 47 U.S.C. § 336(f).

³ The NPRM established February 10, 2000 as the deadline for comments in this proceeding. Therefore, these comments are timely filed.

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(DMA).⁴

INTRODUCTION

Centex is the licensee of low power television station KRHD-LP, located in Bryan, Texas. KRHD-LP is the local ABC affiliate for the Bryan-College Station area, which is located in the Waco-Temple-Bryan, Texas DMA. KRHD-LP currently provides significant amounts of locally-oriented programming specifically designed for the Bryan-College Station area.⁵ However, because of cost considerations KRHD-LP produces the programming using the facilities, equipment and personnel of its sister station KXXV-TV located in Waco, Texas. If the Commission were to adopt the narrow definition of “market area” it proposes, KRHD-LP, despite its substantial local service programming, would not likely be accorded Class A status and, further, would not be able to increase the scope and amount of its locally oriented programming.

DISCUSSION

The CBPA provides that in order to be eligible for Class A status, *inter alia*, a “station [must] broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station.”⁶ However, the statute does not define “market area.” For purposes of the section, the Commission proposed to define “market area” as the

⁴ For a group of commonly controlled low-power stations, the market area should be defined as the DMAs covering all the stations.

⁵ Such programming includes news and weather reports specifically covering the Bryan-College Station area, as well as public service announcements and commercial advertisements for Bryan-College Station organizations and businesses.

⁶ 47 U.S.C. 336(f)(2)(A).

station's protected service area.⁷

The local origination programming requirement was imposed in order to ensure that LPTV stations receiving Class A status were fulfilling their local service obligation. As noted in the House Conference Report:

The conferees ... seek to provide some regulatory certainty for low-power television service [N]ot all LPTV stations can be guaranteed a certain future. Moreover, it is not clear that all LPTV stations should be given such a guarantee in light of the fact that many existing LPTV stations provide little or no original programming service. Instead, the conferees seek to buttress the commercial viability of those LPTV stations which can demonstrate that they provide valuable programming to their communities.⁸

Congress intended to protect and reward LPTV stations which provide communities with locally oriented programming. A broad definition of "market area" serves this purpose, while a narrow definition contravenes Congressional intent and unfairly penalizes those stations providing *locally oriented* programming but not *service area-produced* programming.

The Commission's proposed definition is also particularly troubling because LPTV signals typically extend only to a range of 15-20 miles, in contrast to full-service stations which can reach as far as 60 to 80 miles. *See NPRM*, at ¶3 n.7. Thus, for purposes of determining local origination or locally oriented programming, defining market area by such technical limitations is unduly restrictive. As the Commission has long recognized:

Current broadcast technology and innovative production methods enable stations

⁷ *See NPRM*, at ¶19. For a group of commonly controlled low-power stations, the Commission proposed to define the market area of such stations as the area covered by the protected service area of all stations in the commonly-owned group. *See id.*

⁸ Conference Report on H.R. 1554, Intellectual Property and Communications Omnibus Reform Act of 1999, at 151 (Nov. 9, 1999) ("*Conference Report*").

to present programming in numerous ways and from a diversity of locations. Competitive marketplace forces compel stations to utilize a diversity of programming sources and formats to meet the interests and needs of their communities ... “the coverage of local issues does not necessarily have to come from locally produced programming.”⁹

The Commission has also acknowledged that stringent local origination requirements may prevent cost-efficiencies that otherwise would be generated by joint station operations, collocation of studios and offices, and placement of studios at transmitter sites.¹⁰ Such considerations are especially relevant in light of the Congressional concern about the difficulties LPTV stations have had in maintaining commercial viability.¹¹ To penalize a station, which has produced locally oriented programming from a location within its DMA but not necessarily within its protected service area, perpetuates rather than resolves the economic handicaps under which LPTV stations labor.

⁹ *In the Matter of Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules*, 2 FCC Rcd 3215, 3218 (1987) (citations omitted).

¹⁰ *See id.* at 3217-18.

¹¹ *See Conference Report*, at 151.

CONCLUSION

For the reasons stated above, for purposes of Section (f)(2)(A), the Commission should define "market area" as the Nielsen Designated Market Area.

Respectfully submitted,

Centex Television Limited Partnership

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